



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/781,474  | 02/18/2004  | Floyd Backes         | 160-023             | 3134             |
| 34845   | 7590        | 11/01/2006           | EXAMINER            |                  |
| McGUINNESS & MANARAS LLP<br>125 NAGOG PARK<br>ACTON, MA 01720 |             |                      | TRINH, TAN H        |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2618                |                  |

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/781,474

Applicant(s)

BACKES ET AL.

Examiner

TAN TRINH

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 10-28-2004, 04-28-2005, 05-27-2005 and 10-04-2005, the information disclosure statement has been considered by the examiner.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-4 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 10/781,159. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the claims 1-4 of the instant application are encompassed by the limitations of the claims 1-4 of the copending Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claim 1, claim 1 of copending Application No. 10/781,159 teaches detecting that one or more other access points are also using the radio frequency channel, and responsive to detecting for adjusting transmit power.

Regarding claim 2, claim 2 of copending Application No. 10/781,159 teaches maintaining a table including indications of the power levels of the respective one or more other access points; and wherein the adjusting transmit power does so in response to the indications in the table.

Regarding claim 3, claim 3 of copending Application No. 10,781,159 teaches transmitting a power back off level to other wireless devices in the network, the power back off level indicative of the amount by which the access point's transmit power has been adjusted.

Regarding claim 4, claim 4 of copending Application No. 10,781,159 teaches the wireless communications network is an 802.11 wireless network.

4. Claims 1-4 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 10/781,137. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the claims 1-4 of the instant application are encompassed by the limitations of the claims 1-4 of the copending Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claim 1, claim 1 of copending Application No. 10/781,137 teaches detecting that one or more other access points are also using the radio frequency channel, and responsive to detecting for adjusting transmit power.

Regarding claim 2, claim 2 of copending Application No. 10/781,137 teaches maintaining a table including indications of the power levels of the respective one or more other access points; and wherein the adjusting transmit power does so in response to the indications in the table.

Regarding claim 3, claim 3 of copending Application No. 10/781,137 teaches transmitting a power back off level to other wireless devices in the network, the power back off level indicative of the amount by which the access point's transmit power has been adjusted.

Regarding claim 4, claim 4 of copending Application No. 10/781,137 teaches the wireless communications network is an 802.11 wireless network.

5. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/781,535.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the claim 1 of the instant application is encompassed by the limitations of the claim 1 of the copending Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claim 1, claim 1 of copending Application No. 10/781,535 teaches detecting that one or more other access points are also using the radio frequency channel, and responsive to detecting for adjusting transmit power.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Shpak (U.S. Patent No. 6,907,229).

Regarding claim 1, Shpak teaches a method for use by an access point capable of communicating in a wireless communications network via a radio frequency channel (see fig. 1, access points (AP) 22-23, 25 and 27, communication with multiple mobile station 24, 29 and 31), the method comprising the steps of: detecting that one or more other access points are also using the radio frequency channel (see figs. 1-2, col. 3, lines 5-16, and col. 4, lines 10-44), (Since a second access point determine (detecting) that the downlink signals from the first access point, and the first and second access points can transmit simultaneously, on the same frequency channel); adjusting transmit power to in response to the detecting (see col. 4, lines 40 - col. 5, lines 18), (Since second access point transmitting the second downlink signal includes adjusting a second downlink power level in response to the second uplink power level signal).

Regarding claim 2, Shpak teaches wherein the step of detecting further comprises: receiving messages from the one or more other access points (see col. 4, lines 36-44); maintaining a table including indications of the power levels of the respective one or more other access points (see col. 9, lines 5-17), (Since in this case the maintaining a table is the power information in its broadcast messages, for other access point to keep transmit simultaneously at informs in maintaining power information and good signal); and wherein the step of adjusting transmit power does so in response to the indications in the table (col. 4, lines 40 - col. 5, lines 18, and col. 9, lines 18- col. 10. lines 5).

Regarding claim 3, Shpak teaches the step of: transmitting a power back off level to other wireless devices in the network (see col. 9, lines 12-33), the power back off level indicative of the amount by which the access point's transmit power has been adjusted (see fig. 2, and col. 9, lines 12 - col. 10, line 29, and also see col. 4, lines 40 - col. 5, lines 18), (since the back off level is reduced level for access point is adjusting transmit power).

Regarding claim 4, Shpak teaches wherein the wireless communications network is an 802.11 wireless network (see fig. 1, col. 1, lines 21-35, col. 4, lines 7-9, and col. 5, lines 24-55).

### ***Conclusion***

8. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

**(571) 273-8300, (for Technology Center 2600 only)**

*Hand-delivered responses should be brought to the Customer Service Window (now located at the **Randolph Building, 401 Dulany Street, Alexandria, VA 22314**).*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Trinh whose telephone number is (571) 272-7888. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiners supervisor, Anderson, Matthew D., can be reached at (571) 272-4177.

The fax phone number for the organization where this application or proceeding is assigned is **(571) 273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center 2600 Customer Service Office** whose telephone number is **(703) 306-0377**.



Art Unit: 2618

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tan H. Trinh  
Division 2618  
October 27, 2006

**PATENT EXAMINER**  
**TRINH, TAN**

A handwritten signature in black ink, appearing to read 'Tan H. Trinh', with a horizontal line drawn underneath it.